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THE late Legislature did not know much, but it builded even worse than it knew.

IT is called an "off year" because most of the good Republicans are either off duty or wandering off after strange gods.

OHIO is good for 15,000 majority for the next Republican candidate for President, and Iowa for 25,000. The Journal has a large-sized red apple to bet on these figures.

THE Journal was afraid all along that the approval by the New York mugwump organs of the Republican State ticket was a bad omen, and the results justify the premonition.

DEMOCRATS are advised not to worry themselves sick over "tariff reform." The tariff will be judiciously reformed by a Republican Congress, as it has been more than once before, and it will be done without sacrificing the principle of protection.

THE result in Baltimore gives weight to the rumor that Eugene Higgins, who represented the civil-service principles of the late administration, has not retired from politics to such a distance that he cannot get in at the back door on brief notice.

LET'S see: In 1888 the country went Republican, this year the Democrats win, 1890 will be a Republican year, 1891 Democratic, and 1892 Republican again. That makes Indiana Republican next year and elects a Republican President in 1892. That's right.

NEVER did the Prohibitory party more conspicuously assist the saloon party than in Tuesday's elections. Assuming that most of the third-party voters are honest, their action affords the most remarkable illustration of mental strabismus that the century has afforded.

IT is not to be regretted that the mileage of railroads constructed the present year is only 5,000 miles, and less than during any year for some time. The country has been building more railroads than will pay upon the present business. It is, therefore, well to go slow.

ALREADY the Democratic organs are trying to make it appear that the result in Iowa indicates a growth of free-trade sentiment among the farmers. This will not do. The tariff question had about as much bearing on the election in Iowa as the woman's rights problem in Virginia. Free trade was an issue last year, and the citizens of Iowa decided against it to the tune of 31,000 Republican plurality.

DEMOCRATIC organs are regaling their readers with tales to the effect that President Harrison shows deep chagrin over the result of the elections, and regards it as a rebuke to his administration. Confiding Democrats who read these stories doubtless picture President Harrison as standing on the street corner with his hands in his pockets and expressing his opinions to Democratic reporters. People who know the President and his habit of remaining unstampeded under really discouraging circumstances will smile at the report that he is "visibly overcome" on this occasion.

HASTY Republican papers, anxious to explain the party's defeat in Virginia, fall into the mistake of accepting the Democratic assertion as to Mahone's unpopularity as the cause. This will not do. Mahone may be, and doubtless is, unpopular in certain circles, but an angel of light could not be elected to office in that State if his success depended upon a fair count of the Republican vote. The ante-election boasts of the Democracy that they would win by fair means or foul, and the disgraceful methods pursued at the polls, show that their animosity was directed chiefly toward the negroes, and not to the head of the Republican ticket. The leading purpose was to keep the negro in subjection. It will not do to make Mahone a scape-goat.

THE election in Massachusetts shows a very large falling off in the aggregate vote from the presidential election. That State gave Harrison 183,892 votes, and Cleveland 151,855. It gives Brackett, Republican candidate for Governor, 126,801, and Russell, Democrat, 120,817. The total vote last year was 335,747, against 247,618 this year, a falling off of 88,129. This large reduction is partly due to the lack of interest in an off-year election and partly, no doubt, to the operation of the Australian system. We anticipate a like result in this and other States as the first effect of the law. There are many voters who do not care enough about exercising the privilege to incur the possible trouble or annoyance of complying with a new law, some of whose provisions are a radical departure from old methods. These indifferent, timid or cranky people will not vote unless they are hunted up and urged to, and some of them not then. The result at first will be a falling off in the aggregate vote.

A FAR-REACHING DECISION.

The Supreme Court yesterday rendered one of the most important of the series of decisions on constitutional points raised by the acts of the last General Assembly. In the cases of Worrell vs. Peelle and Yancey vs. Hyde the court holds that the appointment of State Statistician and State Geologist by the Legislature is void, and that these and all other State offices must be filled by the people at a popular election, or, in case of vacancy, by executive appointment. The decision sustains, in the main, the position taken by Governor Hovey, and supported in many articles by the Journal, that while the Legislature may create a statutory office it cannot fill one; that the power to fill such offices is either an elective function to be exercised by the people, or, in the case of a vacancy, an executive one, to be exercised by the Governor. In no case can the Legislature vest in itself the appointing power to a State office created by itself. This view is sustained by arguments which go to the fundamental principles of popular government and by numerous authorities. The constitutional distribution of powers recognized by all writers on constitutional law, contended for by the Governor in his veto messages and by the Journal during the entire discussion of the question, is clearly recognized, and the idea is enforced that the people are at once the source and the residuary legatee of all political power.

The decision of the court, rendered by Judge Berkshire, is concurred in by Judges Coffey and Olds, each rendering a separate opinion. Together they form a series of impregnable arguments and an important exposition of constitutional law. Judges Mitchell and Elliott dissent from the opinion of the court, though the latter holds invalid and unconstitutional, on other grounds, the law enacted by the last Legislature creating the "Department of Geology and Natural Resources," under which defendant Gorby was appointed. The present effect of Judge Elliott's opinion is to give the Governor the power of appointing the State Geologist, Oil Inspector and Inspector of Mines, though on different grounds from those taken by the majority of the court.

The effect of the decision is to call a halt in the practical usurpation of executive power by the Legislature in creating and filling State offices. It furnishes a much-needed exposition of the constitutional powers of the different departments of the government, and, while recognizing the rights of each, places those of the people above all. The cases were very ably argued for the relators by Attorney-general Michener, Hon. A. C. Harris and A. J. Beveridge.

THE REPUBLICAN PARTY AND PROHIBITION.

It will probably not be denied by any person that the prohibition question had a great deal to do with the Republican defeat in Ohio and Iowa. Indeed, it was the main factor. The conditions were different in the two States, but in both the Republican party had allowed itself to become identified with or responsible for radical and impracticable legislation, sentimental in character, personally offensive to a great many people, and impossible of enforcement. In both States the object of this legislation was the same, viz.: legal prohibition of the liquor traffic and compulsory temperance. The Democratic victory in both these States is mainly due to this cause. In 1880 Iowa gave Garfield 78,082 plurality, in 1884 she gave Blaine 19,773, in 1888 she gave Harrison 31,721. Now, she elects a Democratic Governor. Ohio gave Garfield 25,155 majority in 1880, Blaine 15,554 in 1884, and Harrison 19,599 in 1888. Now she elects a Democratic Governor. The figures show that on national issues these States are solidly Republican, while on State issues they are no longer reliable. In 1881, a year after Ohio gave Garfield 25,155 majority, she elected a Republican Governor by only 1,244, and in the same year Iowa elected a Republican Governor by 31,872, after having given Garfield 78,082 twelve months before. Since then the Republican majority has been rapidly decreasing. The great disparity in Republican majorities in national and State elections shows that it is due to State politics and State issues. The chief cause is prohibition and the identification of the Republican party with that kind of legislation. It is this that has undermined, eaten away and finally wiped out the Republican majorities in these two States. The Republican party in these States has been running on false lines until it has finally met with humiliating defeat. The result shows that prohibition is too heavy a weight for the Republican party to carry, even in those strongly Republican States. The idea itself is impracticable, and does not furnish a true solution of the drink question. Admit, for the sake of argument that, morally, theoretically and abstractly, it is right; the fact remains that, politically and practically, it cannot be enforced. Assistant Postmaster-general Clarkson, whose paper, the Iowa Register, is largely responsible for the adoption of prohibition in Iowa, now admits that it was the chief cause of Republican defeat. Referring to the result in that State, as well as in Ohio, he says: "This year's results are, in the main, simply increased evidences of the indisposition of a majority of the American people to accept prohibition and too radical legislation on questions that are moral and social rather than political."

The thing for the Republicans of those States and all other States to do is to adopt a conservative, defensible position on the liquor question, enact good strong license and local option laws, restricting and regulating the traffic, enforce these laws in good faith, and call a halt on the agitation of the question. The first step toward a sensible policy on the question is to cut loose from political prohibition. The Republican party everywhere must either divorce itself from political prohibition or be permanently divorced from majorities. If it is content to fight in a hopeless minority for an impracticable idea it may continue to ally itself more or less closely with a movement which has been constantly absorbing the strength and vitality of the party and giving nothing in return—wiping out its majorities and luring it on to defeat. The Republican party, as a political party, has no identification nor sympathy with prohibition as a political movement, and Republicans in all the States should so declare. That done, let it adopt high license, local option and restrictive police laws as a finality, and call a halt to agitation on the liquor question. The liquor traffic can and must be regulated, but the idea of regulating men's morals must be abandoned. Saloons cannot be abolished, but they can be controlled. If the Republican party is to continue to do business in politics, it must recognize the inevitable in this regard, and adjust itself to immutable conditions.

THE PARTY OF FREE WHISKY.

The feature of the recent elections which stands forth in boldest relief is that in every State the Democratic party has been the champion of the saloon, and in return has received its active support. This fact has been made prominent because this was an off year, and consequently more attention has been given to local matters. In Massachusetts the liquor-dealers furnished the Democracy the sinews of war. In Boston the Democracy was led by a committee whose chairman has for years been the keeper of one or more grog-shops. In that State the saloon was not fighting prohibition, but the party which has passed restrictive laws.

In New York Governor Hill's tattooed ticket owes success to the organization of the liquor interest, which, on Tuesday last, paid him for his valuable service of vetoing a high-license bill, for which he was styled the "saloons' Governor." The saloon-keepers in New York desire, and fight openly for, the free sale of intoxicants.

In New Jersey, the whisky power rallied to support the party which, in the last Legislature, repealed a high-license and local-option law. As the other side did not rally, the party of free whisky won a decided victory.

In Ohio, Republican Legislatures have been placing restriction upon the liquor traffic. This has displeased a large number of people in the large cities, and they cast their ballots in favor of Democracy.

In Iowa, and in the local elections in the counties in which the larger cities are located in Kansas, the Democratic party fought under the banner of high license, because both of these States have prohibition. And so through the list.

At all times and in every place in the North the Democratic party has shown itself the party of the saloon. When it advocates anything else than absolute free trade in intoxicating drink, it is because absolute free trade is an impossibility. When it fights under the banner of high license, it is because nothing else is possible. When it selects its own ground for battle, the Democratic party plants its guns to defend the freest trade in whisky. If through any cause it makes a mistake and helps to impose a high license on the traffic, as was the case in this State, its leaders and organs hurry to the front with humiliating explanations.

But the party of free whisky would not have achieved any of the success which it claims if it had not had a faithful ally in the Prohibition party. And the party of free whisky has recognized the value of this ally and oft times given its leaders substantial encouragement. There is not a saloon headquarters from East to West which does not recognize the value of the third-party ally. Indeed, the only people who cannot see that the prohibitory organization is the co-laborer with the saloon in opposing the restriction of the liquor traffic, are some of those who belong to the third party.

DEMOCRATIC organs in New York city are too happy for any use, though not too happy for utterance. They have on hand at one and the same time a party victory and a clerical scandal, and between the two hardly know how to divide their space. On the editorial page they sanctimoniously deprecate the existence of such distressing reports, and affect to believe that the clergyman whose moral character is assailed is the victim of enemies and will eventually clear his skirts; and, "for the sake of the church," express a hope that such will be the case. Having thus duly "deprecated" the affair they devote columns to the nasty details, in order, perhaps, that when the time comes for "clearing his skirts" they may have excuse for giving the pastor as much room as they now afford his "enemies," upon whom they piously frown, and going over the whole matter again. Such is metropolitan journalism in all its vastness.

IF we had the Australian system of voting in all the Northern States the Democrats could carry more than half of them to-morrow.—Sentinel.

This is the first time we remember to have seen the Australian system advocated as a partisan measure. If it conduces to honest elections, as is claimed, it will inure to Republican advantage in every State where it is adopted. In several of the Southern States it would put an end to Democratic majorities altogether. It appears, from the foregoing, that the Sentinel favored the Australian system as a measure of supposed partisan advantage.

THE Cincinnati Enquirer, in a post-election editorial, says the Democratic victory in that State was largely due to Republican scratching, and adds:

The Republicans who revolted against Governor Foraker did not revolt against the Republican party. Their opposition to their nominee for Governor did not interfere with their standing as Republicans. Their fidelity to their principles remains.

NOW and then a Presbyterian minister is not afraid to speak his mind concerning the "Confession of Faith." The General Assembly referred the question of revision to the presbyteries, and in assigning the matter to a committee several members of the Presbytery of New York were decidedly outspoken in their comments upon the accepted church creed. One Dr. Paxton doubtless expresses the general opinion of the church membership, however he may represent the ministry. He is quoted as saying:

I do not believe in the confession as it stands, although I accept it as a system. The man who would dare to preach the doctrine of infant condemnation and the doctrine of reprobation as expressed in the confession is not a contemporary of the nineteenth century. He is a contemporary of the seventeenth or eighteenth. He is a survival—and not of the fittest.

THE latest quotations of the prince market: Hatzfeldt, closing at $2,000,000; Murat, $10,000 per year bid; trading fairly active, but prices irregular. The "bear" movement led by Miss Caldwell has had the effect of discouraging prospective buyers, but has not yet succeeded in dislodging any "long" stock.

EITHER chickens are very valuable or life is very cheap in Crawford county, where two men were sentenced to prison for one year on the same day, one for attempted murder and the other for stealing a rooster.

ABOUT PEOPLE AND THINGS.

ASH-BLONDE hair being rare, and impossible of imitation, is stylish and expensive.

THE late King Luis, of Portugal, smoked twenty-five cigars a day. No wonder he died before his time.

MR. SWINBURNE'S home, "The Pines," is a temple, every article of furniture being an object of vertu that has a history.

THE Rev. Dr. Arthur T. Pierson bade his host of friends at Philadelphia good-bye on Sunday last, and on Saturday will sail for Europe.

MME. HENRY GREVILLE announces that the old home of George Sand, Nahant, is now for sale. Mme. Dudevant's bedroom and study still remain exactly as she left them.

AT her recent concert in London, Mme. Patti-Nicolini is said to have appeared with the lightest of brown hair. Whether she wore a wig or had bleached her raven tresses is not disclosed.

MRS. REDFIELD PROCTOR will spend most of the winter in the South, nursing her invalid son. In her absence, her daughter and her niece, Miss Carey, will preside over the War Secretary's household.

SIR CHARLES RUSSELL, the English barrister, makes more money than any lawyer in the world. He lives well, works hard, and still rejoices in the fact that he is comparatively a young man.

PAUL DU CHAILLU, who is now in London, will pass the winter in Egypt. He is at work upon an elaborate biography of Gustavus Adolphus. If it doesn't contain any more truth than his African stories, heaven help Adolphus!

VISITORS to the vaults of the Pantheon in Paris remember the echo which the guide used to produce by shouting and pounding on a drum. This has been forbidden by the Minister of the Interior as "a desecration of the abode of the illustrious dead."

AN American amateur recently offered $12,000 to the municipality of Genoa for the violin of Paganini, which is religiously preserved in the city museum as a memento of Genoa's gifted son. The instrument was made at Cremona by Guorneri in 1709. The American's offer was declined.

SAMUEL WILKESON, originally a staff writer on the New York Tribune, but for the last twenty-one years secretary of the Northern Pacific Railroad Company, has been granted an indefinite leave of absence at a salary of $4,000 a year. He is now in the seventy-third year of his age.

BOTH in appearance and in manner the Emperor of Russia has become a Muscovite of the old Cossack type. He is a colossal figure, being a giant both in height and in girth, quite bald, with a flat nose, an immense sweeping moustache, and a stupendous beard, which flows over his chest.

MRS. JAMES G. CLARK, president of the Woman's Club in New Orleans, is spending a few weeks in New York. She is devoting much of her time to close investigation of the methods of co-operative work adopted by Northern women with a view to further benefit to the co-operative sewing department of the Woman's Club in her own city.

JULIAN HAWTHORNE, in describing some unpublished MSS. of his father that he is at present editing says: "He wrote so small a hand that he would put 1,500 words upon a page of ordinary letter paper, and when he had written a word or a line that displeased him he rubbed it out with his finger and wrote over the inky space thus made."

GENERAL FRANCIS E. SPINNER, ex-Treasurer of the United States, has reached Washington on his way to Florida, where he usually spends the winter. His signature on the hotel register is even more characteristically undecipherable than before. He is quite feeble and is beginning to show in a marked degree the weight of his eighty-seven years.

A PARIS cablegram states that Miss Gwendoline Caldwell created a great scene at banker Monroe's office on the day after the one on which her marriage with Prince Murat had been broken off. She went there for the purpose of getting her letters, and in consequence of some remark or other, flew into a terrible passion, calling all the clerks of the bank fools and idiots.

THE Prince of Patagonia and King of Araucania lives in Paris. He is not holding his throne for fear of the Chilians. His name is Achille, and he is of Irish origin. In 1878, after many adventures, he was made King of Patagonia. He has fought in many lands, and expects, some day, to take control of the South American countries to which he was entitled under the will of the late King Orelie.

PRINCE FERDINAND of Bulgaria ranks with Prince Murat of New Jersey, U. S. A., as an unsuccessful suitor. Ferdy has been seeking the hand of the Princess Clementine, youngest daughter of the King of the Belgians. The King would not listen to such an arrangement, however, and when Ferdinand went to Brussels recently he was snubbed. Princess Clementine would have married the Prince of Naples had not the Pope interfered.

JAMES EDWARD CALHOUN, cousin of the famous nullifier, died recently at Abbeville, S. C., at the age of ninety-three. He served in the United States navy from 1816 to 1833, and for the rest of his life was as nearly useless as man could be, not even the war of the rebellion stirring him from his seclusion, in which he devoted himself solely to the increase of his estate. When he died his homestead comprised 25,000 acres of the best land in the State, and he owned 165,000 acres of mountain lands besides.

ONE of the oldest men in the public service at Washington is Mr. Lawrenson, of the Postoffice Department. He has sworn into office all the Postmaster-generals and their subordinates since Jackson's administration. He is an octogenarian. Every day he rides to and from his home in Baltimore, eighty miles in all. He works from 9 A. M. to 4 P. M. He superintends the annual publication of the bids tendered the Postoffice Department for postal service and postal supplies. He is vigorous and cheerful.

SENATOR EVARTS said to a newspaper correspondent in Paris Saturday: "My eyes are fairly restored, and the cure at Carlsbad did me a vast deal of good. From there I went to Vienna and placed myself under the care of Dr. Fuchs, who was extremely encouraging in his promises for the restoration of my sight and for my eventual cure. I am still, however, forced to use the utmost care and am unable to read. Here in Paris, with plenty of time on my hands and within ten minutes' walk of the marvelous exhibition, I am absolutely forbidden to go near it, lest I should run the risk of fatiguing my eyes."

A CHECK ON LEGISLATORS

Opinions of the Supreme Court That Completely Overturn Partisan Acts.

The Last General Assembly Went Beyond the Powers Conferred on It by the People in Electing Certain State Officers.

Departments of Government Cannot Encroach on Each Other.

An Interpretation of the Constitution That Restores to the People Powers That Have Been Heretofore Long Exercised by Others.

Hyde and Peelle Must Leave Offices Obtained by the Legislature's Favor.

Opinions Traversing All Points by Judges Berkshire, Olds and Coffey, from Which Chief-Justice Elliott and Judge Mitchell Dissent.

THEIR TITLE NOT GOOD.

Gorby, as Chief of the Bureau of Geology, and Hyde, His Appointee, Must Give Way.

In the Supreme Court, yesterday, opinions were delivered that removes from office Newton J. Hyde as Chief of the Division of Mineral Oils, and Wm. A. Peelle, jr., as Chief of the Bureau of Statistics. Hyde was appointed by Sylvester S. Gorby as Director of the Department of Geology and Natural Resources of the State, the latter claiming his power as such officer and right to make such appointment under an act passed by the last Legislature. Gov. Hovey appointed John Collett to take Gorby's place, and Collett appointed Simeon T. Yancey to replace Hyde. Yancey brought suit for possession, and upon this case Judge Berkshire delivered the leading opinion, which was concurred in by Judges Old and Coffey. It was as follows:

This action is brought by the appellant to obtain from the appellee, and for the relator, possession of a certain office, and the privilege to exercise the duties thereof, known and designated as "Chief of the Division of Mineral Oils." The complaint alleges the following state of facts, to-wit: That on the 9th day of May, 1889, the Governor of the State of Indiana properly and lawfully appointed and commissioned one John Collett as "Director of the Department of Geology and Natural Resources of the State of Indiana;" that on the 11th of May, 1889, the said John Collett took and subscribed the oath of said office on the back of said commission, and on said day deposited a duly certified copy of said oath in the office of the Secretary of State of Indiana; that the said Collett possessed the requisite qualifications, etc.; that on said day the said John Collett, as such Director, etc., duly and lawfully appointed and commissioned the relator herein chief of said division, etc., under the name and style of "Inspector of Mineral Oils;" that on the 11th day of May, 1889, said relator took and subscribed the oath of the said office, as required by law, and on said day filed the same in the office of the Secretary of State, and on said day executed a bond to the State of Indiana in the sum of $10,000, conditioned, etc.; and that the relator was duly qualified, etc.; that soon after the relator's appointment and qualification, he appointed a suitable number of deputies and in every way prepared himself to perform the duties of his office, and is still prepared so to do; that on the 28th day of February, 1889, one Sylvester S. Gorby intruded into and now usurps and unlawfully holds and exercises the said office of "Director of the Department of Geology and Natural Resources for the State of Indiana" by virtue of a pretended election to said office by the General Assembly of the State of Indiana at its last session; that he is unlawfully exercising and holding and pretending to exercise and perform the duties of said office; that on the 28th day of February, 1889, said Gorby unlawfully pretended to appoint the defendant herein to be "Chief of the Division of Mineral Oils;" under the name and title of "Inspector of Mineral Oils," that acting under said pretended appointment, the said defendant, on said 28th day of February, 1889, intruded into, and now usurps and unlawfully holds and exercises the duties of "Inspector of Mineral Oils," collecting fees, etc.; that the defendant now and always has been without any other claim or title to said office than as above stated; that after the relator's appointment and qualification he demanded the possession of said office of said defendant, who refused, and still refuses to surrender the same. Wherefore, etc.

In an act of the General Assembly for the State of Indiana, which came into force on the 26th day of February, 1889, Elliott's Supplement, beginning with Section 1863, we find the following provisions: "Sec. 1. Be it enacted by the General Assembly of the State of Indiana—that a department of Geology and Natural Resources is hereby established for the purpose of continuing and perfecting the geological and scientific survey of this State; of discovering, developing and preserving its natural resources; recommending securing the enforcement of laws, providing for the health and personal safety of all persons engaged in developing or using the products of its natural resources and collecting and disseminating information concerning its agricultural, mining and manufacturing advantages.

"The said department shall comprise four divisions, as follows:

"First—The Division of Geology and Natural Science.

"Second—The Division of Mines and Mining.

"Third—The Division of Mineral Oils.

"Fourth—The Division of Natural Gas.

"Sec. 2. The General Assembly shall, immediately after the taking effect of this act, elect a competent and suitable person, skilled in geology and natural sciences, Director of the Department of Geology and Natural Resources, who shall be State Geologist and curator of the museum, and chief of the Division of Geology and Natural Science. He shall take an oath of office as other officers, and hold his office for a term of four years, and until his successor is elected and qualified. He shall appoint the chiefs of divisions provided for in this act, and such other assistants as he may deem necessary in prosecution of the work in the Division of Geology and Natural Science; but in no case shall the expenditures under his direction exceed the amount authorized by the General Assembly. The Governor shall, by appointment, fill any vacancy that may occur in the office of director of the departments from any cause, when the General Assembly is not in session, and the person so appointed shall serve as director of the department until the next succeeding session of the General Assembly, when a successor shall be elected by the General Assembly. Provided, however, that no such appointee shall, during such temporary holding, remove any of the chiefs of divisions then serving, but may temporarily fill any vacancies in said offices of chiefs of divisions that may occur by reason of death, resignation, or removal from the State during his incumbency of said office of director. The compensation of director of the department shall be $2,000 per year, to be paid as other salaries are required by law to be paid.

"Sec. 6. The office of State Inspector of Oils is hereby abolished, and the Chief of the Division of Mineral Oils, who shall be known as the Inspector of Mineral Oils, shall, in all respects, perform all the duties now required by law of the State Inspector of Oils, and receive therefor the same fees and compensation now provided by law for the State Inspector of Oils. His annual report shall be made to the director of the department, and shall be included in the published report of the director of the department, and he and his assistants shall in every way comply with the law pertaining to the inspection of oils not repealed by the provisons of this act."

For the duties and compensation of the "Inspector of Mineral Oils," we are, by the act creating the office, referred to an act of the Legislature, approved Sept. 19, 1881, beginning with Section 5151, Revised Statutes, 1881. We do not deem it necessary to make any quotation from that act. It is sufficient to say that the duties of the Inspector of Mineral Oils pertain to the State at large, and are to be performed for the benefit of the whole people of the State. He is not confined in the performance of his official duties to any locality or district, but his authority extends over the entire State. That he is a public functionary there can be no question; the duties which he has to perform are public duties. The act of the Legislature creating the office and defining the duties of the incumbent recognizes him as a public officer, and the position which he holds is an office for the benefit of the public. And, as he is an officer whose duties are co-extensive with the State, he is necessarily a State officer.

Having arrived at the conclusion that the office is a State office, and its incumbent a State officer, we are confronted with the question: Was there a vacancy in the office at the time the relator claims to have been appointed? This question divides itself into two inquiries:

First—Has the Legislature the same general power to fill that it has to create offices?

Second—If it has, then may it create two offices, elect the incumbent to one of them and provide that he shall appoint the incumbent to the other?

Unless the two inquiries can be answered in the affirmative, there was a vacancy in the office in question when the relator claims to have been appointed, for the reason that there was a vacancy co instanti—the creation of the office.

In our State Constitution we find the following constitutional provision: Article 3, Section 1. "The powers of the government are divided into three separate departments: the legislative, the executive, including the administrative and the judicial, and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in this Constitution expressly provided."

The word "function," as here used, means duty, and the clause may be read: "And no person charged with official duties under one of these departments shall exercise the duties of another, except as in this Constitution expressly provided." This constitutional provision is easily understood; it is clear and concise in expression. When applied to the question under consideration, one of two conclusions must follow, or the Legislature was without power to elect the Director of the Department of Geology and Natural Resources, and therefore without power to confer upon him the power to appoint the appellee to the office in question.

(1) The power to appoint to office must be a legislative function, or (2) express power must be lodged somewhere in the Constitution to make such appointment. We cannot give our consent to the affirmative of either of these propositions. The first inquiry, then, is, what is legislative power? We copy from the case of Evansville vs. State, 113 Ind., commencing on page 441: "The word 'legislate' is defined by Worcester as follows: 'That makes or enacts laws; law-making; legislative power; of or pertaining to legislation, or to a legislature, as legislative proceedings.' 'Legislate' is defined by Zell as follows: 'Making, giving or enacting laws; relating or pertaining to the passing of laws.' Webster defines 'legislative' as follows: 'Giving or enacting laws, as a legislative body; pertaining to the enacting of laws; suitable to law, as the legislative style; done by enacting as a legislative act.' Wharton, in his Lexicon, defines legislation as follows: "The act of giving or enacting laws." "Legislature; the power to make laws." Abbott, in his Law Dictionary, under the head of "legislate," has the following: "To make laws." "Legislature: The body of persons in the State clothed with authority to make laws. Legislative power: That one of the three great departments into which the powers of government are distributed—legislative, executive and judicial, which is concerned with enacting or establishing and, incidentally, with repealing laws."

We find the following in Sinking Fund Cases, 99 United States, 700-761, speaking of the judicial and legislative departments: "The one determines what the law is and what the rights of parties are with reference to transactions already had; the other prescribes what the law shall be in future cases arising under it. Legislative power is the power to enact, amend or repeal laws." [Lafayette, etc. R. R. Co. vs. Geiger, 34 Ind., 135. Cooley Const. Lim. 90; Hawkins vs. Governor, 1 Ark., 570; Wayman vs. Southard, 10 Wheat., 146; Greenough vs. Greenough, 11 Pa. St., 489.]

When we come to examine Article 4 of the Constitution, we find that the powers and restrictions placed upon the legislative department are more specific and definite than are applied to either of the other departments. We continue the quotation: "Article 4 is composed of many sections, but they all relate to the exercise of legislative power, and matters incidentally connected therewith. Section 16 of that article, reads: Each house shall have all powers necessary for a branch of the legislative department of a free and independent State."

We quote the following from a very able opinion by Chief-justice Thompson, in Page vs. Allen, 53 Pa. St., 338 [98 Am. Dec., 272]: "The expression of one thing in a constitution is necessarily the exclusion of things not expressed. This I regard as especially true of constitutional provisions declaratory in their nature. The remark of Lord Bacon, that as exceptions strengthen the force of a general law, so enumeration weakens as to things enumerated, expresses a principle of common law applicable to the Constitution, which is always to be understood in its plain, untechnical sense. [Commonwealth vs. Clark, 7 W. & S. 127."] If Article 3, Section 1, had never been placed in the Constitution, the rule of construction as stated by Judge Thompson and Lord Bacon, applied to Section 16 of Article 4, supra, would exclude the Legislature from exercising any other than legislative power. But the framers of the Constitution were not satisfied after the experience that the people had had under the old Constitution, to rely upon the well-known rules of legal construction, and therefore Section 1, Article 3, was placed in the Constitution, expressly confining each department to its own jurisdiction and functions, except so far as expressly provided otherwise.

At this point we desire to call attention to the case of Wright vs. Wright, 2 Maryland, 429-56 Am. Dec., 729, in which occurs: "By the third section of the bill of rights the inhabitants of Maryland are declared entitled to the common law of England, subject, nevertheless, to the revision of and amendment or repeal by the Legislature of the State." And by the sixth section of the same instrument it is said: "The legislative, executive and judicial powers of government ought to be forever separate and distinct from each other." The evident purpose of the declaration last quoted is to parcel out and separate the powers of government and to confide particular classes of them to particular branches of the supreme authority. That is to say, such of them as are judicial in their character to the judiciary, such as are legislative to the legislature, and such as are executive in their nature to the executive. Within the particular limits assigned to each they are supreme and uncontrollable.

The powers of the three great governmental departments are classified under our Constitution the same as in the Maryland Constitution, but in ours the language is much more emphatic and explicit. Whatever may be said of the constitutions of other States, it cannot be successfully maintained that under the Constitution of this State the Legislature possesses latent or undefined powers. Looking to the different provisions of our Constitution, any argument which can be made to maintain the affirmative of this proposition will apply equally to the other departments. Each derives all power which it has by virtue of the Constitution. It must be conceded that ours is a State government made up of delegated powers; to deny this is to deny that the people are the source of power. Originally all power resided with the people. This proposition we have never found contradicted by any court or writer upon elementary law.

We start, then, with that proposition—the people are the source of all power. It follows, therefore, as a logical conclusion, that until they divest themselves of that power it continues to abide with them. When the Constitution of 1816 was set aside, the people thereby reserved to themselves their original power. When they adopted the present Constitution they parted with some part of that original power. The inquiry then arises, what became of it? They delegated legislative power to the Legislature; judicial power to the judiciary, and that of an executive character to the executive of the State, with certain limitations. At the risk of extending this opinion we must quote again Section 1, Article 3: "The powers of government are divided into three departments, the legislative, the executive and the judicial, and no person charged with official duties under one of these departments shall exercise any of the functions of another, except as in this Constitution provided." This article of the Constitution being the one relating to the distribution of powers between the three departments of the State government, how can it be asserted with any regard for the rules of logic and reason that the Constitution simply imposes a limitation on the legislative department, and is at the same time but a grant as to the other departments. The correct and logical conclusion must be that the residuum of power resides with the people, and that the three governmental departments have only such power as has been delegated to them in the Constitution. Any other position is illogical and inconclusive.

We take the following from the opinion in the case of State ex rel. Holt vs. Denny, supra: "At the adoption of the State Constitution all power was vested in the people of the State. The people still retain all power, except such as they expressly delegated to the several departments of the State government. The legislative, executive and judicial departments of the State have only such powers as are granted to them by the Constitution. In the first section and first article of the Constitution it is declared that all power is inherent in the people. It is contended by counsel that as certain rights were granted, and certain other rights reserved by the people, therefore all rights were granted, except such as were exclusively reserved. The peculiarity of this theory is that while the people, by the Constitution, made grants of power to three different departments of government, it is contended that all power that was at the time in the grantor, the people, passed to one branch of the government, viz.: the political or legislative branch, and that it took all power not mentioned in the instrument, and the executive and judiciary took only such as was expressly granted to them, and the people retained such only as was specifically named and reserved. It is certainly a marvelous method of construction, and contrary to all the rules for construing contracts, deeds, wills and other written instruments, and it seems to us that the proposition need but to be stated to prove its fallacy."

That the power to appoint to office is not a legislative function it seems there can be no question. Is it an executive function? That the power to appoint to office is intrinsically an executive function has been decided over and over again, and so held by this, as well as other courts. Upon this question so long settled and well understood there ought to be no difference of opinion, and there has been no contention to the contrary until within the last few years. In the case of the State vs. Noble, 118 Ind., on page 361, the judge, delivering the opinion, said: "Counsel for the defendants refer us to the case of Taylor vs. Com., 3 J. J. Marsh, 461, where it is held that the appointment to office is intrinsically an executive function." Other courts have asserted a like doctrine. Thus, it is said, in State vs. Barbant, 52 Conn. 76, that "appointments to office, by whomsoever made, are intrinsically executive acts." But if we are to accept this doctrine as correct and give it full application, then it would completely destroy the claim of the defendants, for if the right to appoint can never be anything else than an executive act, the attempt of the Legislature to appoint the claimants was utterly abortive. But we do not understand the authorities to assert that the selection of officers is always an executive act. On the contrary, the authorities hold that while the power is intrinsically executive, it may be exercised by a court or by a legislative body as an incidental power of an independent department of the government. No one would, we confidently assume, be so bold as to assert that the Legislature may not appoint officers connected with its duties and proceedings, and there is no more reason for denying the power to the courts than to the Legislature. The truth is, that all independent departments have some appointing power as an incident of the principal